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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 GMAC, INC., a Delaware corporation,

10 Plaintiff,

11 v.

12 LESLIE-FOX, INC., a Washington
13 corporation; JACK E. FOX, and the marital
14 community comprised of JACK E. FOX and
ELECTA FOX, husband and wife,

15 Defendants.
16

No. CV9-1257-MJP

**ORDER GRANTING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER**

17 THIS MATTER came before the Court on Plaintiff GMAC, Inc.'s Motion for Temporary
18 Restraining Order (Dkt. # 2). The Court, having reviewed the Complaint, Plaintiff's Motion, the
19 Declaration of Jim Garland and the exhibits thereto, and the records and files herein, having been
20 satisfied that Defendants have been served with the complaint and Plaintiff's motion, and having
21 heard from both parties at oral argument on the matter, hereby finds that good cause has been
22 shown to issue the requested temporary restraining order based on the following:

23 1. Plaintiff GMAC, Inc. ("GMAC") has shown that, at trial, it will likely prevail on
24 the merits of its claims that Defendants are liable for (1) breaching the Wholesale Agreement, the
25 General Security Agreement, the Forbearance Agreement, and the Surrender Agreement; (2)
26 converting the collateral assigned to GMAC under the General Security Agreement and proceeds

1 thereof, and causing the funds to be used for purposes other than repaying GMAC as agreed;
2 and/or (3) breach of trust for diverting sums held in trust for GMAC and causing the funds to be
3 used for purposes other than repaying GMAC as agreed.

4 2. Plaintiff will suffer irreparable injury if temporary injunctive relief is denied,
5 because the ongoing conversion of its collateral will make it impossible to either perfect its
6 security interest in the collateral or to otherwise reclaim the collateral; and

7 3. The balance of equities favors granting temporary injunctive relief, because the
8 order the court will impose will not impose undue hardship on Defendants, as they will be able to
9 continue their business subject only to the obligation pay GMAC on an ongoing basis to satisfy
10 its collateral interest in each vehicle sold by Defendant.

11 4. Requiring Defendants to abide by the numerous financing agreements they have
12 made with Plaintiff is in the public interest.

13 5. Collectively, these findings satisfy the requirements for injunctive relief as set
14 forth in *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008); *see also*
15 *Stormans, Inc. v. Selecky*, 571 F.3d 960, 977 (9th Cir. 2009) (noting that *Winter* rejected aspects
16 of the Ninth Circuit's prior standard for injunctive relief).

17 6. The court notes that Defendants contended at oral argument that they would soon
18 seek bankruptcy protection. The court issues this order with the understanding that Defendants
19 have not yet filed a bankruptcy petition.

20 NOW, THEREFORE, IT IS HEREBY ORDERED:

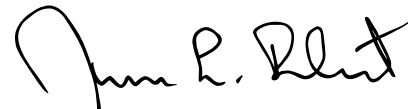
21 1. Plaintiff's Motion for Temporary Restraining Order is GRANTED.

22 2. Defendants are restrained and enjoined for the period of time this Order is in
23 effect from doing, or from permitting or suffering any other person or entity to do, any of the
24 following: (a) paying, disbursing, or otherwise transferring any proceeds from the sale of any
25 vehicle to any party other than GMAC without first paying GMAC the balance owed to GMAC
26 for the particular vehicle, (b) selling any vehicle acquired by the Dealership with floorplan

1 financing from GMAC for a net sale price less than the balance owed to GMAC for the
2 particular vehicle, (c) commingling any of the proceeds from any vehicle sale with other funds
3 until GMAC has been paid in accordance with subsection (a) above; and (d) interfering with
4 GMAC's rights to have an On-Site Representative at the Dealership's premises.

5 3. This restraining order shall become effective for entry upon the posting of a bond
6 in the amount of \$50,000 and shall remain in force and effect for ten days in accordance with
7 Fed. R. Civ. P. 65(b)(2), unless otherwise ordered by the court.

8 DATED this 4th day of September, 2009.

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11 JAMES L. ROBART
12 United States District Judge
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